IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WP(C).No. 18471 of 2006(Y)

PETITIONER:

AMMADAM SERVICE CO-OPERATIVE BANK LTD.
NO.533, AMMADAM, REP. BY SECRETARY,
P.S.JAYASANKAR, RESIDING AT PUTHIYEDATH HOUSE,
AMMADAM P.O., THRISSUR DISTRICT.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENTS:

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1. THE STATE OF KERALA, REP. BY THE
SECRETARY, DEPARTMENT OF REVENUE,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
THRISSUR DISTRICT.

3. THE FOREST RANGE OFFICER,
MALAYATTUR DIVISION, MALAYATTUR.

4. THE TAHSILDAR (RR), THRISSUR.

5. T.S.JAYAPRAKASH, S/O.SANKARAN,
THADATHIL HOUSE, KOTTALAKUNNU DESOM,
P.O.PARALAM, THRISSUR DISTRICT.

R1 TO 4 BY G.P. SRI.BASANT BALAJI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE AGREEMENT DT.23.6.98 EXECUTED IN FAVOUR OF THE PETITIONER.

P2: TRUE COPY OF THE NON-ENCUMBRANCE CERTIFICATE OF THE PROPERTY FOR THE PERIOD 1980-1992.

P3: .DO. 1992-97.

P4: .DO. 1998.

P5: TRUE COPY OF POSSESSION CERTIFICATE DT.17.6.98 OF R5.

P6: TRUE COPY OF AWARD DT.17.1.2002 IN ARC NO.5109/2001.

P7: TRUE COPY OF THE E.P. NO.1404/2002 FILED BY PETITIONER DT.17.6.2002.

P8: TRUE COPY OF NOTICE DT.27.8.2002 ISSUED BY THE SALE OFFICE, THRISSUR.

P9: TRUE COPY OF RR NOTICE DT.NIL ISSUED BY R4.

P10: TRUE COPY OF REPRESENTATION DT.27.5.2006 MADE BEFORE R2.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.18471 of 2006

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Dated this the 21st day of June, 2007.

JUDGMENT

The petitioner-Bank obtained arbitration award against the 5th respondent for around Rs.62,000/-. While execution was pending before the arbitrator, Government attached the very same property and made due efforts to sell the same in recovery proceedings under the Revenue Recovery Act. On both occasions there were no purchaser and property could not be sold. Even though Government Pleader submitted that an amount of Rs.1,69,000/- is the amount claimed by the Government from 5th respondent towards cost pursuant to breach of agreement for sale of teak poles, the details of liability are not furnished in court. Moreover, it is not clear whether revenue recovery notice was served prior to the mortgage of property in favour of the Bank. A mere claim by the Government does not serve as a charge against the property and if RR notice was not served prior to the mortgage in favour of the petitioner, the Bank is entitled to have priority and recover the arrears. Since the Tahsildar failed to sell the property on two occasions, I feel sale could be made through Sale Officer attached to the Arbitrator. However, the claim of priority will be decided by

the 4th respondent after sale is over. The W.P. is accordingly disposed of directing the Arbitrator to authorise sale of the property in public auction after due publicity. As and when sale is effected, the matter will be informed by the petitioner-Bank to the 4th respondent and along with it Bank will make a claim petition with details of mortgage in their favour. The 4th respondent will consider the claim of the Bank over the Government debt and if no revenue recovery notices were served prior to creation of mortgage, payment will be released to the petitioner-Bank. However, if there is a prior charge in favour of the State Government by virtue of operation of Section 44 of the Revenue Recovery Act, so much of the liability will be settled towards Government debt and balance will be given to the Bank.

W.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

pms